

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

1. **Shri Ashok Basu, Chairman**
2. **Shri K.N.Sinha, Member**
3. **Shri Bhanu Bhushan, Member**

**Review Petition No.89/2003
In
Petition No.33/2002**

In the matter of

Review of order dated 30.10.2002 in petition No.33/2002 (Approval of tariff for Feroze Gandhi Unchahar Thermal Power Station for the period from 1.4.1997 to 31.3.2001).

And in the matter of

Uttar Pradesh Power Corporation Ltd

....Petitioner

Vs

1. National Thermal Power Corporation Ltd., New Delhi
 2. Rajasthan Rajya Vidyut Prasaran Nigam Ltd, Jaipur
 3. Delhi Vidyut Board, New Delhi
 4. Haryana Vidyut Prasaran Nigam Ltd, Panchkula
 5. Punjab State Electricity Board, Patiala
 6. Himachal Pradesh State Electricity Board, Shimla
 7. Power Development Department, Govt. of J&K, Jammu
 8. Engineering Department, Union Territory of Chandigarh, Chandigarh
 9. Uttaranchal Power Corporation Ltd., Dehradun
-Respondents**

The following were present

1. Shri Shyam Moorjani, Advocate, UPPCL
2. Shri D.D. Chopra, Advocate, UPPCL
3. Shri T.K. Srivastava, UPPCL
4. Shri M.G. Ramachandran, Advocate, NTPC
5. Shri V.B.K. Jain, GM (Comml), NTPC
6. Shri M.S. Chawla, AGM (Comml), NTPC
7. Shri S.K. Samvi, NTPC
8. Shri D.G. Salpekar, NTPC
9. Shri A.K. Poddar, NTPC
10. Shri T.P.S. Bawa, Superintending Engineer, PSEB

11. Shri K.K. Mittal, XEN(ISP), RRVPNL
12. Shri T.C. Nigolgi, XEN, RRVPNL

ORDER
(DATE OF HEARING 3.3.2004)

Uttar Pradesh Power Corporation Ltd has filed this application seeking review and/or reconsideration and/or clarification and/or modification of the Commission's order dated 30.10.2002 in petition No 33/2002.

2. Petition No 33/2002 was filed by National Thermal Power Corporation Ltd for approval of tariff for Feroze Gandhi Unchahar Thermal Power Station for the period from 1.4.1997 to 31.3.2001. The said petition was disposed of by the Commission vide its order dated 30.10.2002. The petitioner feels aggrieved on account of capital base of Rs 909.71 crore considered for computation of tariff and hence seeks review of the said order dated 30.10.2003.

3. Feroze Gandhi Unchahar Thermal Power Station was transferred on 13.2.1992 from the erstwhile Uttar Pradesh State Electricity Board, the predecessor of the present petitioner, to National Thermal Power Corporation at a cost of Rs 925 crore. The tariff for the generating station for the period 13.2.1992 to 31.3.1997 was determined by the Central Government in Ministry of Power vide notification dated 26.3.1994. While determining tariff, Ministry of Power had considered the project cost of Rs 909.71 crore. This included gross block of Rs 893.84 crore and initial spares of Rs 15.87 crore.

4. The tariff for the period from 1.4.1997 to 31.3.2001 was determined by the

Commission in its order dated 30.10.2002 in Petition No 33/2002. While approving tariff, the project cost of Rs 909.71 crore, earlier considered by the Central Government was adopted by the Commission for the purpose of determination of tariff. According to the petitioner, the capital base of Rs 643.84 crore, which was the book value of the generating station at the time of its take over by National Thermal Power Corporation Ltd from Uttar Pradesh State Electricity Board, ought to have been considered by the Commission. In support of its contention, Uttar Pradesh Power Corporation Ltd has relied upon the Commission's order dated 28.6.2002 in Petition No 77/2001, which relates to tariff for Tanda Thermal Power Station. Tanda Thermal Power Station was also transferred from the erstwhile Uttar Pradesh State Electricity Board to National Thermal Power Corporation Ltd, at a transfer cost of Rs 1000 crore. However while approving tariff for Tanda Thermal Power Station, the Commission considered the book value of Rs 607 crore, which was the original cost of the generating station as on the date of commercial operation, as the base for calculation of tariff. Uttar Pradesh Power Corporation Ltd accordingly seeks review of the capital cost considered by the Commission for Feroze Gandhi Unchahar Thermal Power Station for tariff determination purpose.

5. We heard Shri Shyam Moorjani, Advocate and Shri DD Chopra, Advocate on admission of the application for review. We also heard Shri M.G. Ramachandaran, Advocate for National Thermal Power Corporation.

6. In our view the application is not maintainable for the reasons being discussed in

the succeeding paragraphs.

7. While approving tariff for Feroze Gandhi Unchahar Thermal Power Station, the Commission in paragraph 5 of the order dated 30.10.2002, took note of the fact that in Petition No 77/2001 (Tariff for Tanda Thermal Power Station), the Commission had not allowed the entire transfer cost of Rs. 1000 crore as the capital base for computation of tariff, but had limited the capital base to the completion cost (Rs 607 crore) as on the date of commercial operation. The Commission proceeded to hold that since in the case of Feroze Gandhi Unchahar Thermal Power Station the transfer price of Rs. 909.71 crore was earlier considered by Ministry of Power for tariff calculations for the period ending 31.3.1997, this was taken into account without re-opening the settled issue. Thus, the opening gross block of Rs. 909.71 crore has been adopted through a conscious and deliberate decision of the Commission after taking into account all the relevant facts. Therefore, the order is not susceptible to review as it is not a case of any error on the face of record.

8. There is another reason also for which the application for review is not maintainable though the reasons given in paragraph 7 above are sufficient for disposal of the application. The application for review was filed on 7.11.2003, that is, after expiry of more than one year from the date of issue of order sought to be reviewed. In accordance with Regulation 103 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, an application for review of order can be made within a period of 60 days from the date of the order. Separately, the Commission has held that the limitation

for making the application for review should count from the date of knowledge of the order by the party seeking review. The order sought to be reviewed was sent on 1.11.2002. Thus, even after allowing the reasonable time, the application for review filed on 7.11.2003 is still beyond the prescribed period of limitation, for which no reasons whatsoever have been put on record. Learned counsel for Uttar Pradesh Power Corporation Ltd attempted to persuade us to entertain the application for review in exercise of the inherent power conferred on the Commission by virtue of Regulation 112 ibid. We are not prepared to buy the argument for the reason that the inherent power under Regulation 112 can be invoked only in the absence of any statutory provisions. These powers are not to be exercised when their exercise may be in conflict with what has been expressly provided in the regulations. In the present case, the period of limitation of 60 days has been prescribed and therefore, the matter is to be considered in the light of the statutory provisions. The Commission has power to condone the delay in appropriate cases. However, Uttar Pradesh Power Corporation Ltd has not made even a feeble attempt to seek condonation of delay as no reasons for delay in filing of the application have been placed on record or satisfactorily explained orally at the hearing. Therefore, apart from what is stated in the preceding paragraph, the application is not maintainable, being barred by limitation.

9. On facts also the cases of Feroze Gandhi Unchahar Thermal Power Station and Tanda Thermal Power Station are distinguishable. In the latter case the first tariff after its takeover by National Thermal Power Corporation Ltd was determined by the Commission. The Commission, in that case after taking into consideration various

aspects, decided that the book value of the generating station as on the date of commercial operation should be considered for the purpose of determination of tariff. However, for Feroze Gandhi Unchahar Thermal Power Station tariff was initially determined by the Central Government from the date of its takeover (13.2.1992) and upto 31.3.1997. It was only after expiry of this period that the tariff has been decided by the Commission and while doing so, the Commission has adopted the capital base as earlier considered by the Central Government.

10. Uttar Pradesh Power Corporation seems to have accepted the cost considered by the Central Government since it had been paying tariff without taking any further steps and without any protest. At this stage Uttar Pradesh Power Corporation Ltd. cannot be allowed to impugn the capital cost considered a decade ago for tariff fixation. In our view the capital cost for the purpose of tariff determination has acquired finality.

11. For the foregoing reasons, the application for review is not maintainable and hence is dismissed at admission stage.

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi dated 11th March, 2004